From: Daniel Upper
To: Microsoft ATR
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Subject: Microsoft Settlement

The proposed settlement is grossly inadequate in two substantial ways.

First, it doesn't address the primary reason that business users use Windows, which is Microsoft's "Office" suite of productivity applications -- notably Word, Excel, and Powerpoint. Most businesses and industries (the legal profession being something of an exception) have effectively standardized on these applications. Because most office workers have the Office applications available, it is common practice to email documents to others in Word, Excel, and Powerpoint file formats.

This common practice effectively requires everyone in the business world to have applications which can read and write Office file formats. And -- because only Microsoft knows all the details of these file formats -- the only applications which can read and write all aspects of these formats are those sold by Microsoft. Most word processors have some ability to read Word documents, but stop short of implementing features like "change tracking", which is widely used in collaborative work. The non-Microsoft tools I've tried for reading Powerpoint presentations have all been unable to render some slides intelligibly at all. I, for one, use Linux for almost all of my computer tasks, but can not function in the business world without access to a Windows computer.

So Microsoft has two mutually supportive monopolies, one on operating systems Windows and the other on productivity application suites. Resolution of case must provide a way for other OSes to have full use of/access to MS Office format documents. And it is not sufficient to require MS to sell versions of the Office applications for other OSes. MS has sold versions of the applications for MacOS, and MS has manipulated the production of these versions in ways which have enhanced the Windows monopoly.

Microsoft should publicly document all file formats and network protocols it uses. Such documentation can be inadequate -- accidentally or deliberately -- so if there's any doubt that the documentation is adequate, MicroSoft should be required to publish working code. In addition, the clauses in Microsoft's End User Licence Agreements (EULAs) which prohibit the user from disassembling, decompiling and reverse engineering should be voided and Microsoft should be prohibited from including such clauses in future EULAs.

Second, the proposed settlement only seeks to provide relief to Microsoft's commercial competitors. Certain clauses in the proposed settlement, such

as Section III(J)(2), require Microsoft to make specified information available to businesses, and let Microsoft judge who qualifies as a business. Various not-for-profit entities, including not-for-profit organizations, individuals, universities, and government agencies -- are important participants in the software industry. Public interest is not served by excluding them.

Quite a bit of important and widely used software is developed by non-for-profit entities. Such software includes the Linux OS, which is developed by an ad-hoc group of programmers and may be the OS which comes closest to competing with Windows. There are indications that Microsoft is concerned that Linux and other "open source" software may become important competitors. (Although there are companies in the business of enhancing and selling Linux, most Linux software is not written by these companies.)

Instead of requiring Microsoft to make specified information available to specific businesses, the settlement should require Microsoft to publish the same information publically.

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